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15 UNITED STATES DISTRICT COURT

16 CENTRAL DISTRICT OF CALIFORNIA

17 WESTERN DIVISION

18 American Rena International Corp., a
19 California corporation; WanZhu
20 “Kathryn” Li, an individual; and Robert
21 M. Milliken, an individual,

22 Plaintiffs,

23 vs.

24 Sis-Joyce International Co., Ltd., a
25 California corporation; Alice “Annie”
26 Lin, an individual; Robert Simone, an
27 individual; Christine Ko, an individual;
28 and DOES 3-10,

Defendants.

CASE NO. CV-12-06972-FMO (JEMx)

**PLAINTIFFS’ REQUEST
PURSUANT TO RULE 55(a) THAT
THE CLERK OF THE COURT
ENTER DEFAULT AGAINST
DEFENDANTS ROBERT SIMONE
AND CHRISTINE KO**

**TO ALL PARTIES, THEIR ATTORNEYS OF RECORD, AND THE
CLERK OF THE ABOVE-ENTITLED COURT:**

Pursuant to Federal Rule of Civil Procedure 55(a), plaintiffs American Renaissance International Corp.; WanZhu “Kathryn” Li; and Robert M. Milliken hereby request that the Clerk of the above-entitled Court enter default in this matter against defendant **ROBERT SIMONE**, an individual, and **CHRISTINE KO**, an individual, on the ground that said defendants have failed to appear or otherwise respond to Plaintiffs’ First Amended Complaint within the time prescribed by the Federal Rules of Civil Procedure and this Court’s order of March 26, 2013. (Dkt. 107).

I. ROBERT SIMONE

Plaintiffs filed their original Complaint in this action on August 13, 2012. (Dkt. 1). On September 11, 2012, plaintiffs substituted Robert Simone as “Doe 1” to the Complaint. (Dkt. 22). Because of Simone’s concerted efforts to conceal his identity and physical location, this Court subsequently authorized e-mail service on Simone of the “Summons, Complaint, Amended Complaint, and any other papers required to be served upon Mr. Simone, including without limitation any motions, applications, notices and discovery requests.” (Dkt. 50). Accordingly, plaintiffs served Simone with the Summons and Complaint by e-mail on October 24, 2012. (Dkt. 53).

Because Simone did not appear or respond to the original Complaint within the time prescribed by the Federal Rules of Civil Procedure, plaintiffs requested that the Clerk of the Court enter Simone’s default as to the original Complaint on November 16, 2012. (Dkt. 60). The Clerk entered Simone’s default as to the original Complaint on December 11, 2012. (Dkt. 74).

On March 27, 2013, plaintiffs filed their First Amended Complaint (“FAC”) (Dkt. 108). The FAC asserted new theories of liability and factual predicates, and it added Christine Ko as a defendant. *Id.* The FAC superseded the original complaint (See, e.g., *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992) (it is a “well-

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1 established doctrine that an amended pleading supersedes the original pleading.”)),
 2 and, because it added a defendant and asserted new theories of liability and factual
 3 predicates, was required to be served on Simone under Fed. R. Civ. P. 5(a)(2). *See*
 4 FED. R. CIV. P. 5(a)(2) (“a pleading that asserts a new claim for relief against [a
 5 party in default] must be served on that party under Rule 4.”). The filing of the
 6 FAC, therefore, provided Simone with another opportunity to respond, and required
 7 plaintiffs to seek a renewed entry of default as to Simone. *See Katzakian v. Check*
 8 *Resolution Service, Inc.*, 2010 WL 5100912, at *3 (E.D. Cal. Dec. 15, 2010) (“If
 9 Plaintiff is going to pursue a Motion for Default Judgment based on an amended
 10 complaint, she shall obtain an entry of default from the Office of the Clerk based on
 11 the amended pleading [.]”); *Best Western International, Inc. v. Melbourne Hotel*
 12 *Investors, LLC*, 2007 WL 2990132, at *1 (D. Ariz. Oct. 11, 2007) (filing of
 13 amended complaint cured previous default entered by Clerk of Court); *Vanguard*
 14 *Financial Service Corp. v. Johnson*, 736 F. Supp. 832, 835 (N.D. Ill. 1990) (denying
 15 as moot plaintiff’s motion for default judgment where amended complaint
 16 subsequently filed).

17 Accordingly, pursuant to this Court’s order authorizing email service,
 18 Plaintiffs served Robert Simone with the Summons and FAC by e-mail on April 1,
 19 2013. The Proof of Service was filed with the Court as Dkt. 122. By this Court’s
 20 order, (Dkt. 107), defendant Robert Simone was required to respond, answer or
 21 otherwise plead to plaintiffs’ FAC by April 11, 2013. As of June 6, 2013, neither
 22 defendant Robert Simone nor anyone claiming to represent defendant Robert
 23 Simone has responded to the FAC or contacted plaintiffs or their counsel to request
 24 an extension of time to respond to plaintiff’s FAC.

25 A second entry of default against Mr. Simone is therefore appropriate.

26 II. CHRISTINE KO

27 Christine Ko was substituted as the defendant previously sued under the
 28 fictitious name of Doe 2 on March 27, 2013 (Dkt. 108). Christine Ko was served


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1 with the Summons and FAC by personal service on April 5, 2013, and plaintiffs
 2 filed the Proof of Service as Dkt. 121. Pursuant to Fed. R. Civ. Proc. 12, Ko was
 3 required to respond, answer or otherwise plead to plaintiffs' complaint by April 26,
 4 2013. As of June 6, 2013, neither defendant Christine Ko nor anyone claiming to
 5 represent defendant Christine Ko has responded to the FAC or contacted plaintiffs
 6 or their counsel to request an extension of time to respond to plaintiffs' FAC.

7 The above-stated facts are set forth in the accompanying Declaration of Ryan
 8 Q. Keech filed herewith. Because defendants Robert Simone and Christine Ko have
 9 failed to "plead or otherwise defend" in response to plaintiff's First Amended
 10 Complaint, plaintiffs now request that the Clerk of the Court enter default against
 11 Simone and Ko pursuant to Fed. R. Civ. Proc. 55(a).

12
 13 DATED: June 6, 2013

QUINN EMANUEL URQUHART &
 SULLIVAN, LLP

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 15 
 16 By _____
 17 Bruce E. Van Dalsem
 18 Attorneys for American Rena International
 19 Corp.; WanZhu "Kathryn" Li; Robert M.
 20 Milliken
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 865 South Figueroa Street, 10th Floor, Los Angeles, California 90017-2543.

On June 6, 2013, I served true copies of the following document(s) described as **PLAINTIFFS' REQUEST TO ENTER DEFAULT AGAINST DEFENDANTS CHRISTINE KO AND ROBERT SIMONE; DECLARATION OF RYAN Q. KEECH** on the interested parties in this action as follows:

Leon E. Jew JEW & ASSOCIATES 5776 Stoneridge Mall Rd., Ste. 288 Pleasanton, CA 94588 ljewpt@yahoo.com	Counsel for Defendants SIS-JOYCE INT'L CO., LTD. ALICE "ANNIE" LIN
CHRISTINE "NINA" KO 773 Barnum Way, Monterey Park, CA 91754 christineko7@yahoo.com	<i>Defendant</i>
ROBERT SIMONE 269 S. Beverly Drive, Box 121 Beverly Hills, CA 90212 robsimonetalks@yahoo.com submitmystuff@yahoo.com rehaus1@gmail.com	<i>Defendant</i>

BY E-MAIL AND MAIL: I attached true and correct .pdf copies of such documents to e-mails sent to the last known e-mail addresses known to be utilized by the parties and deposited such document(s) in a box or other facility regularly maintained by FedEx, or delivered such document(s) to a courier or driver authorized by FedEx to receive documents, in sealed envelope(s) or package(s) designated by FedEx with delivery fees paid or provided for, addressed to the person(s) being served.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 6, 2013, at Los Angeles, California.

/s/ Ryan Keech
Ryan Keech

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